



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **201329027**

Release Date: 7/19/2013

Date: April 23, 2013

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XXXXXXXXXXXX

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Uniform Issue List

4943.00-00

Legend:

Corporation =

Testator =

M =

X =

Y =

Dear :

This is in response to your ruling request dated November 7, 2012, requesting an extension for an additional five years under I.R.C. § 4943(c)(7) for disposing of certain excess business holdings.

FACTS

You are a foundation described in § 501(c)(3) and classified as a private foundation under § 509(a). You were formed pursuant to the last will and testament of Testator, and funded with percent of the stock of the Corporation ("the shares") by a bequest from the Testator. All of the stock of the Corporation is common voting stock, with equal voting rights. Your initial five-year period for disposing of excess business holdings ends on X.

At the time of your acquisition of the shares, the Corporation operated several retail stores and warehouses throughout multiple states. The Corporation owned the commercial real property upon which each store or warehouse was located, as well as that of its headquarters.

Over the last five years, you have coordinated with the Corporation's management and prepared an offering booklet. You have retained a reputable investment banking firm to market the Corporation's sale. You have made significant marketing efforts with an investment banker to market the Corporation to competitors, former employees, and various other potential purchasers. You have worked with the Corporation's management to help improve the

Corporation's performance and to simplify some of its business holdings. As a part of these efforts, the Corporation's Chief Executive Officer was replaced and four stores were closed. However, due the complex nature of the Corporation, and the current economic climate, you have been unable to dispose of the excess business holdings. You state the disposition of the excess business holdings within the initial five-year period has not been possible, except at a price substantially below fair market value.

You represent that you have been diligently negotiating a purchase of the excess business holdings by an employee-owned group. You plan to dispose of the excess business holdings to M. M consists of a group of employees who are unrelated to you, and none of whom are disqualified persons as defined in § 4946. You expect the sale to be leveraged, and that the excess business holdings will be sold to M in tiers through a single purchase agreement. You anticipate negotiation of a purchase agreement with M in the next year.

You state that if negotiations with M fail to provide a successful sale of the excess business holdings within the five-year extension, you will pursue additional marketing opportunities and revisit other interested parties. You state your "back-up" plan to improve marketability of the Corporation includes evaluating, and if necessary, reorganizing the business holdings, the management team, and the management succession of the Corporation. Additionally, you will evaluate your current investment banker and consider other marketing assistance and counsel. You have submitted your plan to the Attorney General of your state, and submitted such Attorney General's approval of that plan to the Internal Revenue Service.

RULING REQUESTED

You requested a ruling extending the five-year period of time for disposal of excess business holdings under § 4943(c)(7).

LAW

I.R.C. § 507(d)(2) defines a substantial contributor, for purposes of § 4946, as any person who contributed or bequeathed an aggregate amount of more than \$5,000 to the private foundation, if such amount is more than two percent of the total contributions and bequests received by the foundation before the close of the taxable year of the foundation in which the contribution or bequest is received by the foundation from such person.

I.R.C. § 4943(a)(1) imposes excise taxes on the excess business holdings of any private foundation in a business enterprise.

I.R.C. § 4943(c)(1) provides the term "excess business holdings" means, with respect to the holdings of any private foundation in any business enterprise, the amount of stock or other interest in the enterprise which the foundation would have to dispose of to a person other than a disqualified person in order for the remaining holdings of the foundation in such enterprise to be permitted holdings.

I.R.C. § 4943(c)(2) provides that the permitted holdings of any private foundation in an incorporated business enterprise are twenty percent (20%) of the voting stock, reduced by the

percentage of the voting stock owned by all disqualified persons. If the private foundation and all disqualified persons together do not own more than thirty-five percent (35%) of the voting stock of an incorporated business enterprise, and it is established to the satisfaction of the Secretary that effective control of the corporation is in one or more persons who are not disqualified persons with respect to the foundation, then the permitted holdings of the private foundation in an incorporated business enterprise are thirty-five percent (35%) of the voting stock, reduced by the percentage of the voting stock owned by all disqualified persons.

I.R.C. § 4943(c)(6)(A) provides that, if there is a change in the holdings in a business enterprise (other than by purchase by the private foundation or by a disqualified person) which causes the private foundation to have excess business holdings in such enterprise, the interest of the foundation in such enterprise (immediately after such change) shall (while held by the foundation) be treated as held by a disqualified person (rather than by the foundation) during the five-year period beginning on the date of such change in holdings.

I.R.C. § 4943(c)(7) provides that the Internal Revenue Service may extend for an additional five years the initial five-year period for disposing of excess business holdings in the case of an unusually large gift of bequest of diverse business holdings or holdings with complex corporate structures if:

- (A) The foundation establishes that: (i) it made diligent efforts to dispose of such holdings during the initial five-year period, and (ii) disposition within the initial five-year period has not been possible (except at a price substantially below fair market value) by reason of such size and complexity or diversity of holdings;
- (B) Before the close of the initial five-year period: (i) the private foundation submits to the Internal Revenue Service a plan for disposing of all of the excess business holdings involved in the extension and (ii) the private foundation submits the plan to the Attorney General (or other appropriate State official) having administrative or supervisory authority of responsibility with respect to the foundation's disposition of the excess business holdings involved and submits to the Internal Revenue Service any response the private foundation received during the five-year period; and
- (C) The Internal Revenue Service determines that such plan can reasonably be expected to be carried out before the close of the extension period.

Treas. Reg. § 53.4943-6(b)(1) provides that, in the case of an acquisition of holdings in a business enterprise by a private foundation pursuant to the terms of a will or trust, the five-year period described in § 4943(c)(6) and in this section shall not commence until the date on which the distribution of such holdings from the estate or trust to the foundation occurs.

Treas. Reg. § 53.4943-3(b)(3)(ii) provides that effective control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a business enterprise, whether through the ownership of voting stock, the use of voting trusts, or contractual arrangements, or otherwise. It is the reality of control which is decisive and not its form or the means by which it is exercisable. Thus, where a minority interest held by individuals who are not disqualified persons has historically elected the majority of a corporation's directors,

effective control is in the hands of those individuals.

ANALYSIS

You are subject to § 4943, which imposes a tax on the excess business holdings of private foundations. Generally, under § 4943(c)(2)(A), the permitted holdings of a business enterprise by a private foundation is twenty percent of the voting stock, reduced by that held by disqualified persons. However, if the private foundation and disqualified persons own no more than thirty-five percent of the voting stock and it is established to the satisfaction of the Secretary that effective control of the corporation is in one or more persons who are not disqualified persons, then the permitted holdings of the business enterprise is thirty-five percent of the voting stock, reduced by that held by disqualified persons. The excess over the permitted holdings are excess business holdings.

If a private foundation acquires holdings in a business enterprise other than by purchase, e.g., by bequest, which causes the foundation to have excess business holdings, then the interest of the foundation in such business enterprise shall be treated as being held by a disqualified person, rather than the foundation, for a five- year period beginning on the date such holdings were acquired by the foundation, under § 4943(c)(6)(A).

Under § 4943(c)(7), the Internal Revenue Service may extend the initial five-year period for disposing of excess business holdings for an additional five years if a foundation establishes that: (i) it made diligent efforts to dispose of the holdings during the initial five-year period, and the disposition within the initial five-year period has not been possible, except at a price substantially below fair market value, by reason of such size and complexity or diversity of holdings; (ii) before the close of the initial five-year period the foundation submits to the Internal Revenue Service and the Attorney General, or other appropriate State official, having administrative or supervisory authority of responsibility with respect to the foundation's disposition of the excess business holdings involved a plan for disposing of all of the excess business holdings involved in the extension; and (iii) the Internal Revenue Service determines that such plan can reasonably be expected to be carried out before the close of the extension period.

You received a bequest of one hundred percent of the shares of the Corporation from the testator, a disqualified person under § 4946. You have stated that the holdings of the Corporation you own constitute excess business holdings under § 4943(c)(1) because you own more than twenty percent of the Corporation's holdings. Therefore, you are required under § 4943(c)(6) to dispose of the excess business holdings during the initial five-year period ending on X. During the initial five-year period, you made diligent efforts to dispose of the excess business holdings, as required by § 4943(c)(7)(A). Over the last five years, you have coordinated with the Corporation's management and prepared an offering booklet. You have retained a reputable investment banking firm to market the Corporation's sale, and made significant marketing efforts to market the Corporation to competitors, former employees, and various other potential purchasers. You have worked with the Corporation's management to help improve the Corporation's performance and to simplify some of its business holdings, including replacing management and closing stores.

However, due the complex nature of the Corporation, and the current economic climate, you have been unable to dispose of the excess business holdings. You represented that the disposition of the excess business holdings within the initial five-year period has not been possible, except at a price substantially below fair market value.

Before the end of the initial five-year period, you submitted a request to the Internal Revenue Service under § 4943(c)(7) for an extension of an additional five years within which to dispose of the excess business holdings. In that request, you described your plan for disposition of the excess business holdings within the additional five-year period. Your plan includes recent efforts at negotiating a purchase agreement for the excess business holdings with an employee-owned group. You also state that if negotiations with M fail to provide a successful sale of the excess business holdings within the five-year extension, you will pursue additional marketing opportunities and revisit other interested parties. You state you will also evaluate a reorganization of the business holdings, the management team, management succession of the Corporation, and your current investment banker.

You also submitted the plan to the Attorney General of your state, and submitted such Attorney General's approval of that plan to the Internal Revenue Service. Based on the information submitted, we have determined that your plan to dispose of the excess business holdings within an additional five-year period can reasonably be expected to be carried out. Therefore, we conclude that you meet the requirements of § 4943(c)(7) for an extension of five years to dispose of your excess business holdings.

RULING

Under § 4943(c)(7) , the period during which you may dispose of your excess business holdings is extended an additional five years, until Y.

This ruling will be made available for public inspection under § 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Theodore Lieber
Manager, Exempt Organizations
Technical Group 3

Enclosure
Notice 437